

FILED

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

HAROLD DAVID STORY, INC.,
d/b/a CEDAR CREEK,

KNOX COUNTY CIRCUIT, CIVIL
SESSIONS & JUVENILE COURT
CATHERINE SHENKS, CLERK

Plaintiff,

v.

PILOT CORPORATION, and
PILOT TRAVEL CENTERS, LLC
d/b/a PILOT FLYING J,

Defendants.

CIVIL ACTION NO. 2-422-13

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

COMES NOW HAROLD DAVID STORY, INC., d/b/a CEDAR CREEK and alleges as
its complaint and demand for jury trial the following:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Harold David Story, Inc., d/b/a Cedar Creek (hereafter "Cedar Creek"), is a Georgia corporation with its principal place of business located at 156 Valley Pointe Road, S.E., Dalton, Georgia 30721.
2. Defendant Pilot Corporation, f/k/a Pilot Oil Corporation, is a Tennessee corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee, 37909, and may be served via its registered agent, C T Corporation System, located at 800 S. Gay St., Suite 2021, Knoxville, Tennessee 37929.
3. Defendant Pilot Travel Centers, LLC, d/b/a Pilot Flying J, is a Delaware corporation with its principal place of business located at 5508 Lonas Dr., Knoxville, Tennessee,

37909, and may be served via its registered agent, C T Corporation System, located at 800 S. Gay St., Suite 2021, Knoxville, Tennessee 37929.

4. Venue and jurisdiction are proper in this Court.

II. FACTUAL ALLEGATIONS

5. Plaintiff Cedar Creek is a trucking company that does business in Tennessee and throughout the United States.

6. Defendants Pilot Corporation, and Pilot Travel Centers, LLC, d/b/a Pilot Flying J (hereafter, collectively "Pilot") have adopted, promulgated, represented and benefitted from inaccurate, fraudulent rebate procedures and pricing structures for certain customers, including the Plaintiff.

7. Pilot regularly, purposely and intentionally understated the amount owed to Cedar Creek and other similar companies, promised by Pilot sales representatives as a rebate for purchase of their diesel fuel.

8. Cedar Creek received numerous rebate checks in varying amounts from Pilot.

9. Pilot owners, executives, directors, principals, sales agents and administrative staff conspired to manually reduce the amount of rebate payments due to Cedar Creek, and numerous other customers, in order to increase Pilot profits and increase sales commissions of its sales agents, without the consent or knowledge of Cedar Creek or other affected customers.

10. On April 18, 2013, the affidavit of FBI Special Agent Robert Root, filed in support of his search warrant application, was unsealed by the U.S. District Court for the Eastern

District of Tennessee at Knoxville. (See Case No. 3:13-MJ-2028, Doc. 4, attached hereto as Exhibit “A”).

11. Upon information and belief, Pilot represented to Cedar Creek and numerous other Pilot customers, that Pilot would provide them with a rebate on diesel fuel purchased at their truck care facilities and travel centers operating throughout the country, pursuant to terms of the diesel price discount deal and agreement between Pilot and the customer.

12. Customers such as Cedar Creek would receive the rebate amount either via check on a monthly or quarterly basis, or via a direct discount on the invoice for “direct bill” customers to whom Pilot had extended credit for the purchase of diesel fuel.

13. Beginning in May, 2011, the Federal Bureau of Investigation entered into an agreement with confidential sources to obtain information about Pilot’s rebate fraud scheme involving many of its customers, including Cedar Creek.

14. Over the course of the investigation, it was determined that Pilot employees had been intentionally defrauding some of its customers, including Cedar Creek, by deliberately charging a higher price than the contractually agreed upon price, and then concealing the fact and nature of this increased price from victimized customers.

15. The federal investigation included the use of concealed recording devices carried with the consent of confidential informants to record conversations the informant had with Pilot employees concerning the rebate fraud scheme.

16. These recordings reveal that Pilot maintained at its corporate offices in Knoxville, Tennessee, spreadsheets showing the amount owed to customers under their rebate agreements versus the amount actually paid.

17. These informants also recorded information shared at sales seminars in which sales representatives were advised to commit rebate fraud by sending Cedar Creek and other customers less than was owed, and training sales representatives on how to determine which customers such as Cedar Creek would have difficulty discovering the price discrepancies.

18. Pilot employees targeted customers like Cedar Creek who utilized non-party credit lines such as TCheck, who were referred to as “low hanging fruit.” (See Ex. A at p. 87). Cedar Creek was one of the companies targeted by Pilot.

19. Pilot staff intentionally withheld relevant pricing information from its customers, including Cedar Creek, who made inquiries about the rebate amounts they received.

20. If a customer caught the discrepancy, Pilot blamed it on a computer glitch.

21. The recorded conversations between the FBI informant, a Pilot sales representative, and his co-workers revealed that these actions were taken with the awareness and consent of Pilot executives, including Chief Executive Officer James A. “Jimmy” Haslam, III, President Mark Hazelwood, and Chief Financial Officer Mitch Steenrod.

22. These conversations also reveal that Pilot took active steps to conceal their activities from its customers and from law enforcement officials.

23. Plaintiff Cedar Creek has been damaged by Pilot’s misrepresentations, concealment, and non-disclosure of correct rebate amounts because it was induced to purchase diesel fuel at a rate different than what was promised, and paid substantially more than the agreed-upon rate.

24. Cedar Creek is aware of and understands the terms of the proposed class action settlement that has been preliminary approved in the case of National Trucking Reclamation

Services, Inc. et al. v. Pilot Corporation, et al. pending in the Eastern District of Arkansas, Case No. 4:13-cv-00250-JMM. The “opt out” deadline is apparently October 15, 2013. With this deadline approaching, Cedar Creek recently made inquiry of Pilot as to the amounts Pilot’s internal audit showed as owed to Cedar Creek. Pilot advised Cedar Creek that it had not completed any internal audit of FORMER customers and did not anticipate having this done until “this fall or thereabouts”. It therefore appears that Pilot seeks to again ensnare the unsophisticated by having a class action settlement approved, the terms of which will likely remain undisclosed by Pilot until after opt out date. Cedar Creek does not wish to participate in the proposed settlement and will opt out of it.

III. CAUSES OF ACTION

COUNT I

Conversion

25. Plaintiff re-alleges all foregoing paragraphs as if fully incorporated herein.

26. Pilot wrongfully converted consumer rebate funds owed to Cedar Creek to its own use. Facts in support of the allegations against Pilot are set out with great specificity in Exhibit “A” which is included and incorporated herein by reference.

27. Cedar Creek is entitled to the rebate funds withheld by Pilot pursuant to Pilot’s agreements and promises to fully and faithfully pay rebate funds to Cedar Creek.

28. Plaintiff is entitled to return of these rebate funds, punitive damages and pre-judgment interest.

COUNT II

Fraud or Violation of "Tennessee Consumer Protection Act of 1977"

29. Plaintiff re-alleges all foregoing paragraphs as if fully incorporated herein.

30. As set out above, Defendants knowingly entered into a fraudulent scheme in which its intent was to deceive Cedar Creek and fraudulently cheat Cedar Creek out of funds owed to Cedar Creek by Pilot. The Defendants' scheme used fraudulent misrepresentation and intentional deception to deceive Cedar Creek to its detriment.

31. As a result of the above-mentioned scheme and fraudulent activity, Cedar Creek was injured to its detriment and was caused significant damages when Cedar Creek was forced to restructure debt and financing it would otherwise not have had to do.

32. The Defendant's activity amounted to fraud, which would entitle Cedar Creek to punitive damages, as well as a violation of the Tennessee Consumer Protection Act of 1977, which would entitle Cedar Creek to treble damages and attorney fees.

COUNT III

Breach of Contract

33. Plaintiff re-alleges all foregoing paragraphs as if fully incorporated herein.

34. Pilot entered an agreement with Cedar Creek and other consumers to provide rebates for purchase of diesel fuel at a set amount.

35. Cedar Creek and other consumers purchased diesel fuel from Pilot travel centers rather than from Pilot's competitors in the diesel fuel market, in reliance on this agreement.

36. Pilot partially performed its portion of the agreement by sending rebates.

37. Pilot breached its duties under the agreement by willfully failing to provide the full amount of the agreed-upon rebate to Cedar Creek.

38. Cedar Creek, who has suffered economic losses as a result of Pilot's willful conduct are entitled to recovery of the amounts owed under the contract and other consequential damages caused by its breach.

39. Cedar Creek has suffered economic losses as a result of Pilot's willful conduct and is entitled to recovery of the amounts owed under the contract as well as other consequential damages caused by said breach.

COUNT IV

Punitive Damages

40. Plaintiff re-alleges all foregoing paragraphs as if fully incorporated herein.

41. At all times relevant herein, Defendants acted willfully and with reckless disregard of Plaintiff's rights, as described in Exhibit "A," and incorporated herein.

42. Plaintiff is entitled to punitive damages for damages sustained as a result of Defendants' actions.

COUNT V

Attorneys' Fees

43. Plaintiff re-alleges all foregoing paragraphs as if fully incorporated herein.

44. Defendants have acted in bad faith and in violation of the Tennessee Consumer Protection Act of 1977, warranting an award of attorneys' fees to Plaintiff in an amount to be determined at trial.

WHEREFORE, premises considered, Plaintiff prays for the following relief:

- (1) That Judgment be entered against the Defendants for all appropriate damages;
- (2) For a trial by jury of twelve persons;
- (3) For an award of actual damages due to conversion and breach of contract in an amount to be proven at trial;
- (4) For an award of punitive damages as determined by an impartial jury;
- (5) For treble damages pursuant to the Tennessee Consumer Protection Act of 1977;
- (6) For an award of attorney's fees in an amount determined by this Court; and
- (7) For all other relief this Court deems equitable and just.

Respectfully submitted, this ____ day of August, 2013.

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COST BOND

WE HEREBY ACKNOWLEDGE OURSELVES AS SURETIES
FOR THE COSTS OF THIS CAUSE FOR ALL COURT COSTS
AND TAXES IN ACCORDANCE WITH TCA SECTION 20-12-
120.

HAROLD DAVID STORY, INC.

By: Drew McElroy
Drew McElroy
Attorney for Harold David Story, Inc.
Principal

LAW OFFICE OF DREW MCELROY

By: Drew McElroy
Drew McElroy
Attorney for Harold David Story, Inc.
Surety